IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 14729 of 1996

Between:

A.Nageswara Rao S/o.Rattaiah
R/o.Hanamkonda Warangal Dist

..... PETITIONER

AND

1 The Industrial Tribunal Cum Labour Court, Warangal, rep.by its Presiding Officer
2 The Depot Manager A.P.S.R.T.C., Narsampet, Warangal Dist

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for records from the 1st respondent and issue appropriate order, direction or a writ, particularly, one in the nature of writ of certiorari and quash the award passed by the 1st respondent in ID.No.380/1986 Dt.15/11/1995 published on 10/04/1996 in so far as denying the petitioner to continuity of service and back wages as illegal, unjust , contrary to law and perverse and grant all other consequential benefits.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1 ---

Counsel for the Respondent No.2 : SMT.P.RAJANI REDDY

The Court made the following ORDER :

Heard Sri. A.K. Jayaprakash Rao, learned counsel appearing for the petitioner and also Smt. P.Rajani Reddy, learned standing counsel appearing on behalf of the second respondent-Corporation.

The petitioner herein, who is a conductor working under the second respondent-Corporation, filed this writ petition *inter alia* seeking a Writ of Certiorari challenging the award passed by the Industrial Tribunal-cum-Labour Court, Warangal-first respondent herein, in I.D.No.380 of 1986 dated 15.11.1995 as published in the gazettee on 10.04.1996 insofar as the refusal of the relief of continuation of service and back wages.

The case of the petitioner, in brief, is that he has joined the service of the second respondent-Corporation on 02.07.1975 as Conductor and has got a good record of service all along. While so, a check was conducted on 06.08.1982 on the route Narsampet to Warangal at Stage No.9 by the checking officials and a charge sheet was issued on certain allegations on 16.09.1982 framing in all about eight charges, which include substantially, the acts of mis-behaviour on the part of the petitioner and also non-issuance of tickets to the passengers. After conducting enquiry, the second respondent-Corporation, terminated the services of the petitioner, whereupon the petitioner has raised an industrial dispute in I.D.No.380 of 1986 before the first respondent and ultimately, the first respondent after regular enquiry and after hearing both sides, found that the petitioner is not guilty of charge Nos. 1 to 4 and 8. However, the petitioner was found guilty of charge Nos. 5 to 7. Accordingly, it was held that the petitioner is not entitled to any indulgence. But, taking into consideration, the petitioner's services, the Tribunal has directed the second respondent-Corporation to appoint the petitioner afresh.

Learned counsel appearing for the petitioner submits that having regard to the findings arrived at by the Tribunal with regard to charge Nos.1 to 4 and 8, especially, relying on the findings given by the Criminal Court, the Labour Court ought not to have found the petitioner guilty in respect of charge Nos. 5 to 7 also and ought not to have denied him the benefit of reinstatement and continuance of service apart from back wages. For no fault of him, the petitioner is found guilty and therefore, the entire findings of the first respondent are perverse and are liable to be set aside.

On the other hand the learned standing counsel appearing on behalf of the second

respondent-Corporation sought to sustain the findings on the ground that the findings of the Tribunal are supported by not only cogent evidence but also sufficient reasons and hence, the impugned order does not call for any interference.

After considering the submissions made by both the counsel and also on a perusal of the material available on record, the questions now fall for consideration are as to whether the termination of the petitioner is valid on the charges as made against him and also as to whether the Labour Court was right in refusing the re-instatement along with continuity of service and back wages?

There is no dispute about the basic facts that the petitioner is working as a conductor with the second respondent-Corporation having been appointed on 02.07.1975 and that a check was conducted on 6.8.1982, while the petitioner was conducting the bus No. APZ 9265 at about 12.30 hours on the route Narsampet to Warangal. On the ground that the petitioner has mis-behaved and did not issue tickets to the passengers, a charge sheet has been issued to the petitioner containing the following eight charges.

> "1. For having colluded with two to three follower friends with a view to deprive the legitimate revenues of the Corporation, while performing duty on route Narsampet-Warangal on 06.08.1982, which constitutes mis-conduct under Reg.No.28 (iii) APSRTC, Employees Conduct Reg. 1963.
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> 2. For having incited the travelling passengers and the local people at Cirnibavi stage No.9 against the checking officials of Exs. Squad, while checking the bus No. APZ 9265 at about 12.30 hours with the connivance of followers who have pounded on the checking officials and snatched away the ticket tray and S.R. and attempted to assault them and also forced them out of the bus and encircled all of them including Assistant Traffic Manager which constitutes mis-conduct under Reg. 28 (xxxi) of APSRTC Employees (Conduct) Reg. 1963.
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> 3. For having unruly exsorted to behaviour towards the ATR and checking officials of Exs. squad, while on duty, which constitutes mis-conduct under Reg.No. 28 (xxi) of APSRTC, Employees (Conduct) Reg.1963.
>
> 4. For having behaved in an insubordination manner with the ATR and checking officials, which constitutes mis-conduct under Reg.No.28(viii) of APSRTC, (Conduct) employees Reg. 1963.

5. For having failed to issue tickets to as adult and a chargeable boy found alighting at Cirnibavi, who boarded the bus at Narsampet, Ex-stages, 6 to 9 even after collecting the requisite fare of Rs.1.65 at their boarding point itself, which constitues mis-conduct under Reg.No.28(vi) (a) of APSRTC, Employees (Conduct) Reg. 1963.

6. For having failed to issue tickets to eight passengers found traveling who boarded the bus at Narsampet for various destination, ex-stages shown against each, even after collecting the requisite fare at their boarding point itself, which constitutes mis-conduct Reg.No. 28 (vi) (a) of APSRTC Employees (Conduct) Reg.1963.

Sl.No. No. of Passengers Round for Ex-Stage

1. 5 Warangal 6 to 15

2. 2 Kammala 6 to 10

3. 1 Machapur 6 to 11

7. for having failed to collect fare and issue tickets to three adults and to a chargeable buy found traveling ex-stages 8 to 15, who boarded the bus at Lakhapally for Warangal which constitutes mis-conduct under Reg.28 (vi) (a) of APSRTC Employees (Conduct) Reg.1963.

8. For having refused to attest the ticket less passengers statement when asked for, at the place of check, which constitutes mis-conduct under Reg.28(viii) of APSRTC Employees (Conduct) Rg.1963."

Thereupon, an enquiry was conducted by the second respondent-Corporation. Simultaneously, the petitioner was also prosecuted for the said offence in a Criminal Case in C.C.No.332 of 1982. However, subsequently, by the Judgment dated 06.07.1983, the Judicial First Class Magistrate, at Narsampet, has acquitted him of all the charges framed therein.

In the domestic enquiry conducted by the second respondent-Corporation, the petitioner was found guilty of all the charges, and accordingly he was removed from service. Thereupon, an industrial dispute was raised by the petitioner before the first respondent, wherein the petitioner had examined WW1 to WW3 and marked Exs.W.1 and W.2. On behalf of the second respondent-Corporation, M.Ws 1 to 3 were examined and Exs.M1 to M.14 were marked. Considering the same, the first respondent held that the petitioner is not guilty of charge Nos. 1 to 4 and 8. However,

it found the petitioner guilty in respect of charge Nos 5 to 7, and therefore, did not order for re-instatement with all the benefits as sought for by him in the claim petition and directed that the petitioner be appointed as a fresh recruitee in the second respondent-Corporation without continuity of service and back wages.

On a reading of the very charges, it is quite evident that charge Nos. 1 to 4 and 8 are primarily on the aspect of mis-behaviour on the part of the petitioner and charge Nos. 5 to 7 are in respect of non-issuance of the tickets to the passengers. All these allegations as culled out from all the eight charges are pertaining to only one incident i.e., the check made on 06.08.1982, while the petitioner was conducting the bus on the route Narsampet to Warangal. In respect of charge Nos. 1 to 4 and 8, first respondent straight away placed reliance on the findings given by the Criminal Court in its judgment dated 06.07.1983 and thereby acquitted the petitioner in respect of substantial and very serious allegations of mis-behaviour on his part. However, while holding the petitioner guilty in respect of charge Nos 5 to 7, the first respondent sought to place reliance on the evidence of WW.1 to WW.3 to whom, the petitioner did not issue the tickets. It is to be seen that the allegations forming part of charge Nos. 5 to 7 made against the petitioner cannot be separated in any manner from that of charge Nos 1 to 4 and 8 as they are part of one and sole incident of check. Acts of mis-behaviour and also the alleged non-issuance of the tickets to the passengers run on the same lines and, therefore, having placed reliance on the findings of the criminal Court in its judgment while acquitting the petitioner on charge Nos 1 to 4 and 8, the first respondent ought to have seen that the very same findings as arrived by the Criminal Court in its Judgment, can also hold good in respect of the allegations made against the petitioner under charge Nos. 5 to 7. It is the finding of the Criminal Court that the management/prosecution has totally failed to prove any such act of mis-behaviour on the part of the petitioner and further, it is also it's finding that there could not have been proper check on the part of the officials at the relevant point of time. Admittedly, no statements of passengers were recorded and in the absence of any such statements especially, when confronted with the findings as against the management as to the behaviour of the petitioner, it has to be held that the management has totally failed to establish any of the allegations made against the petitioner as can be culled out from charge Nos 1 to 8 together.

In view of the same, the writ petition is allowed. The impugned award is set aside

holding that the petitioner is not guilty of charge Nos.5 to 7, apart from confirming the findings as given by the first respondent that the petitioner is not guilty of charge Nos 1 to 4 and 8. The second respondent-Corporation is directed to re-instate the petitioner with continuity of service and with all back wages apart from all the benefits to which he is entitled under the Rules. No costs.

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23rd November, 2004

bud/lvl

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the Twenty Third day of November, Two Thousand and Four.

Copy to:

1. The Presiding Officer,
   Industrial Tribunal-cum-Labour Court,
   Warangal.
2. The Depot Manager, A.P.S.R.T.C.,
   Narsampet, Warangal District.

3. Two C.D.Copies.